

# Proposed Rules

Federal Register

Vol. 72, No. 233

Wednesday, December 5, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 51

[Docket # AMS-FV-07-0010; FV-06-302]

#### United States Standards for Grades of Sweet Cherries

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Advanced notice of proposed rulemaking; withdrawal.

**SUMMARY:** The Agricultural Marketing Service (AMS) is withdrawing the notice soliciting comments on its proposal to amend the voluntary United States Standards for Grades of Sweet Cherries. After reviewing and considering the comments received, the agency has decided not to proceed with this action.

**EFFECTIVE DATE:** December 5, 2007.

**FOR FURTHER INFORMATION CONTACT:** Vincent J. Fusaro, Standardization Section, Fresh Products Branch, (202) 720-2185. The United States Standards for Grades of Sweet Cherries are available by accessing the Fresh Products Branch Web site at: <http://www.ams.usda.gov/standards/stanfrfv.htm>.

#### Background

AMS identified the United States Standards for Grades of Sweet Cherries for possible revisions. The revision would have included adding standardized row sizes into the standard. These standardized row sizes would establish a uniform basis for defining size in the industry. The standards were last revised on May 7, 1971.

On March 30, 2007, AMS published a proposed rule in the **Federal Register** (72 FR 15055) soliciting comments on a possible revision to the United States Standards for Grades of Sweet Cherries. The sixty-day comment period ended May 29, 2007.

Three comments were received. All three comments received, one from a

grower, packer, shipper, another from a separate grower, packer, shipper, and one from an association representing independent wholesale receivers, were in opposition to revising the United States Standards for Grades of Sweet Cherries. The first commenter stated that the current standard has not been a problem as it is currently written. The second commenter stated that adding standardized row sizes would limit the ability of farmers to market their sweet cherry crop. This commenter also stated that the market already enforced sizing standards that are firm but flexible, which is necessary because sweet cherries are highly perishable and subject to fluctuations in crop size and market conditions. The third commenter stated that there was concern about the viability of the proposal. This commenter suggested several different solutions, however, those solutions are not within the scope of this proposal and therefore will not be addressed in this action. These comments are available by accessing the <http://www.regulations.gov> Web site.

After reviewing and considering the comments received, AMS has decided not to proceed with the action. Therefore, the proposed rule published March 30, 2007 (72 FR 15055) is withdrawn.

**Authority:** 7 U.S.C. 1621-1627.

Dated: November 29, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E7-23531 Filed 12-4-07; 8:45 am]

**BILLING CODE 3410-02-P**

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Parts 4041 and 4042

**RIN 1212-AB14**

#### Disclosure of Termination Information

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** This is a proposed rule to implement section 506 of the Pension Protection Act of 2006 (Pub. L. 109-280) which amends sections 4041 and 4042 of ERISA. These amendments require that a plan administrator disclose information it has submitted to PBGC in

connection with a distress termination filing, and that a plan administrator or plan sponsor disclose information it has submitted to PBGC in connection with a PBGC-initiated termination. The new provisions also require PBGC to disclose the administrative record in a PBGC-initiated termination. The disclosures must be made to an affected party upon request.

**DATES:** Comments must be submitted on or before February 4, 2008.

**ADDRESSES:** Comments, identified by Regulatory Information Number (RIN 1212-AB14), may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the Web site instructions for submitting comments.

- *E-mail:* [reg.comments@pbgc.gov](mailto:reg.comments@pbgc.gov).

- *Fax:* 202-326-4224.

- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026.

Comments received, including personal information provided, will be posted to <http://www.pbgc.gov>. Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, or calling 202-326-4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4040.)

**FOR FURTHER INFORMATION CONTACT:** Kenneth Cooper, Attorney, Office of the General Counsel; or Catherine Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026; 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

#### SUPPLEMENTARY INFORMATION:

#### Background

Pension Benefit Guaranty Corporation ("PBGC") administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. 1301-1461. Sections 4041 and 4042 of ERISA

govern the termination of single-employer defined benefit pension plans that are subject to Title IV. A plan administrator may initiate a distress termination by sending a notice of intent to terminate to all affected parties pursuant to section 4041(a)(2). Under section 4042 of ERISA, PBGC may itself initiate proceedings to terminate a pension plan if it determines that certain conditions are present.

Under section 4041(c), a single-employer plan may terminate in a distress termination if PBGC determines that the requirements of section 4041(c)(2)(B) are met. Before PBGC can make this determination, the plan administrator must provide certain information to PBGC pursuant to section 4041(c)(2)(A). Under section 4041.45(c) of PBGC's regulation on Termination of Single Employer Plans, 29 CFR part 4041, PBGC may also require the submission of additional information.

PBGC determines whether a plan meets the criteria for a distress termination or a PBGC-initiated termination through an informal adjudicatory process. If PBGC staff believe that a plan should be terminated, a written recommendation is prepared. With certain exceptions, the recommendation is then reviewed by the Trusteeship Working Group ("TWG"), an interdepartmental body comprised of representatives from PBGC's financial, actuarial, policy, regulatory, and legal departments. If the TWG agrees with the staff recommendation, it forwards its own recommendation concerning the termination to the Director or other designated official ("Deciding Official"). All determinations are documented in a trusteeship decision record.

As part of the informal adjudicatory process, PBGC staff may present or make available to the TWG information and documents that relate to a termination recommendation and, if the TWG recommends termination, to the Deciding Official. This material may include information that PBGC has obtained from the plan sponsor or plan administrator, as well as other information that PBGC has obtained or generated.

For PBGC-initiated terminations, if the Deciding Official approves the termination, PBGC sends a notice to the plan administrator that the determination has been made ("Notice of Determination"). The plan may then be terminated by agreement or PBGC may apply to the appropriate district court for a decree adjudicating that the plan must be terminated.

### PPA 2006 Amendments

On August 17, 2006, the President signed into law the Pension Protection Act of 2006, Pub. L. 109-280 ("PPA 2006"). Section 506 of PPA 2006 adds disclosure provisions to both sections 4041 and 4042 of ERISA. These provisions allow an affected party to request information related to a plan termination from the plan administrator in the case of a distress termination under section 4041, and from the plan administrator, plan sponsor, and PBGC in the case of a termination under section 4042. "Affected party" is defined in section 4001(a)(21) of ERISA to include each participant in the plan, each beneficiary under the plan, each employee organization representing plan participants, and PBGC.

With respect to distress terminations, the new provisions require that a plan administrator that has filed a Notice of Intent to Terminate must provide to an affected party, upon request, information submitted to PBGC in conjunction with the distress termination. This information must be provided not later than 15 days after receipt of the request. One of the new provisions allows a court to limit disclosure of confidential information to an authorized representative of the participants and beneficiaries that agrees to keep the information confidential.

With respect to PBGC-initiated terminations, the new provisions require that, following receipt by the plan administrator of a Notice of Determination, the plan sponsor, plan administrator, and PBGC must provide information related to the termination to an affected party upon request. The plan sponsor or plan administrator must, not later than 15 days after receipt of a request, provide copies of any information it provided to PBGC in connection with the termination. PBGC must, not later than 15 days after receipt of a request, provide a copy of the administrative record, including the trusteeship decision record. As in the distress termination provisions, one of the new provisions allows a court to limit disclosure of confidential information to an authorized representative. The new provisions are applicable to terminations initiated on or after August 17, 2006.

### Proposed Regulation

#### General Provisions

Section 506 of PPA 2006 generally requires that information be provided to an affected party upon request. The proposed regulation requires that all requests to the plan administrator, plan

sponsor, or PBGC be made in writing, and contain information relating to the plan, and the requestor's status as an affected party.

Section 506 of PPA 2006 requires that the plan administrator, plan sponsor, or PBGC provide information not later than 15 days after receipt of a request. A plan administrator or plan sponsor must also provide information not later than 15 days after the submission of additional information to PBGC. For this purpose, because a large amount of information may need to be disclosed in a short time, PBGC is interpreting "day" to mean "business day," as defined in § 4000.22 of the PBGC's regulation on Filing, Issuance, Computation of Time, and Record Retention, 29 CFR part 4000.

Sections 4041(c)(2)(D)(iii) and 4042(c)(3)(D) of ERISA, added by PPA 2006, state that PBGC may prescribe the form and manner of the provision of information under the respective provisions. These provisions state that information may be delivered "in written, electronic or other appropriate form to the extent such form is reasonably accessible" to the individual who makes the request. PBGC's issuance rules in part 4000, subpart B, are appropriate for the provision of information under sections 4041(c)(2)(D)(iii) and 4042(c)(3)(D). Accordingly, the provision of information under section 4041(c)(2)(D)(iii) will be governed by § 4041.3 of PBGC's current regulation, which provides that subpart B of part 4000 applies to issuances relating to plan terminations. The date of issuance will be determined in accordance with part 4000, subpart C, as provided in § 4041.3.

With respect to a PBGC-initiated termination, the proposed regulation requires that a plan administrator or plan sponsor respond to a request under section 4042(c)(3)(D) in accordance with part 4000, subpart B. The proposed regulation further provides that the date of issuance is determined in accordance with the rules in part 4000, subpart C.

Sections 4041(c)(2)(D)(iii)(II) and 4042(c)(3)(D)(ii) provide that a plan administrator, in the case of a distress termination, and a plan sponsor, in the case of a PBGC-initiated termination, may charge a reasonable fee for any information provided in other than electronic form. Unlike the "form and manner" provisions, the provisions on fees do not give PBGC authority to prescribe what constitutes a reasonable fee. PBGC does not believe it can prescribe such fees in the absence of specific statutory authorization.

### Information To Be Disclosed by Plan Administrator in Distress Terminations

Under section 4041(a)(2) of ERISA, a plan administrator that seeks to terminate a plan in a distress termination must provide a notice of intent to terminate to each affected party. The notice must include information required under PBGC's regulations. Section 4041.43 of PBGC's regulation on Termination of Single Employer Plans specifies the information that must be included in a notice of intent to terminate that is issued to affected parties other than PBGC. The regulation also requires that a separate notice with additional information be filed with PBGC on PBGC Form 600, Distress Termination, Notice of Intent to Terminate. After the notices of intent to terminate have been issued to affected parties other than PBGC and the Form 600 has been filed with PBGC, additional information must be submitted to PBGC at a later date in accordance with section 4041(c)(2) of ERISA and § 4041.45 of the regulation.

Section 4041(c)(2)(D)(i) of ERISA, added by PPA 2006, states in relevant part:

A plan administrator that has filed a notice of intent to terminate under subsection (a)(2) shall provide to an affected party any information provided to the corporation under subsection (a)(2) not later than 15 days after—

- (I) receipt of a request from the affected party for the information; or
- (II) the provision of new information to the corporation relating to a previous request.

PBGC is interpreting this provision as requiring disclosure of the Form 600 and any additional information submitted to PBGC under section 4041(c)(2) of ERISA. PBGC recognizes that because the statute references only section 4041(a)(2), which addresses the notice of intent to terminate, it is possible to read section 4041(c)(2)(D)(i) as requiring that a plan administrator disclose only the Form 600. Such a narrow reading, however, would be at odds with Congress's intent to provide greater disclosure of information submitted to PBGC in connection with a distress termination.

The Technical Explanation of PPA 2006 prepared by the staff of the Joint Committee on Taxation states that section 506 requires "a plan administrator to provide an affected party with any information provided to the PBGC in connection with the proposed plan termination." The broad reference to "any information \* \* \* in connection with the proposed plan termination"—without the limitation to section 4041(a)(2)—suggests the

required disclosures include information submitted to PBGC under section 4041(c)(2), in addition to the Form 600 filed pursuant to section 4041(a)(2) and the implementing regulation. Further, because a plan administrator files the Form 600 once, requiring disclosure of only the Form 600 would give no effect to the requirement in section 4041(c)(2)(D)(i)(II) that a plan administrator must provide copies of new information it submits to PBGC not later than 15 days after such submission.

In light of these considerations, the proposed regulation provides that, upon written request of an affected party, a plan administrator must provide copies of any information submitted to PBGC pursuant to sections 4041(a)(2) and 4041(c)(2) of ERISA and sections 4041.43 and 4041.45 of the regulation not later than 15 business days after receipt of the request. If PBGC Form 600 has not been filed with PBGC at the time of the request, the proposed regulation requires the plan administrator to provide the information not later than 15 business days after PBGC Form 600 is filed. In addition, the proposed regulation requires that if the plan administrator has provided information in response to a request and later submits additional information to PBGC in connection with the proposed distress termination, the plan administrator must, not later than 15 business days after the submission, provide copies of that information to any affected party that has made a previous request.

If a plan administrator fails to provide information under section 4041(c)(2)(D)(i) of ERISA and the implementing regulation within the specified timeframe, PBGC may assess penalties under section 4071 of ERISA.

### Information To Be Disclosed by Plan Administrator and Plan Sponsor in a Termination Initiated by PBGC

Section 4042(c)(3) of ERISA imposes disclosure requirements on the plan administrator, the plan sponsor, and PBGC in connection with a PBGC-initiated termination. With regard to the plan sponsor and plan administrator, the statute provides that, upon request:

A plan sponsor or plan administrator of a single-employer plan that has received a notice from [PBGC] of a determination that the plan should be terminated under this section shall provide to an affected party any information provided to the corporation in connection with the plan termination. Section 4042(c)(3)(A)(i).

Under this provision, an affected party may request termination

information only after the plan administrator has received a Notice of Determination from PBGC that the plan should be terminated. The proposed regulation adopts an assumed receipt date of 3 business days after PBGC issues the Notice of Determination. Thus, a request for information may be made on or after the third business day after the Notice of Determination is issued. Once such a request is received by the plan administrator or plan sponsor, the information must be provided not later than 15 business days after receipt of the request. As in the case of a distress termination, if new information relating to the request is submitted to PBGC, copies must be provided, not later than 15 business days after the submission, to any affected party that has made a previous request.

A plan administrator or plan sponsor that fails to provide information requested under section 4042(c)(3) of ERISA and the implementing regulation within the specified timeframe may be subject to penalties under section 4071 of ERISA.

### Disclosure of Administrative Record by PBGC in Terminations Initiated by PBGC

Section 4042(c)(3)(A)(ii) of ERISA states that, upon request of an affected party, PBGC "shall provide a copy of the administrative record, including the trusteeship decision record of a termination of a plan" not later than 15 days after receipt of the request. The right to request a copy of the administrative record arises only after a Notice of Determination that the plan should be terminated is received by the plan administrator. As in the provisions relating to requests for information from the plan administrator or plan sponsor, the proposed regulation adopts an assumed receipt date of 3 business days after PBGC issues the Notice of Determination. Thus, a request for the administrative record may be made on or after the third business day after the Notice of Determination is issued. The proposed regulation further provides that PBGC will send the administrative record to the affected party not later than 15 business days after it receives the request, and will use measures reasonably calculated to ensure actual receipt (including electronic measures). This standard is analogous to the requirements in Part 4000, subpart B, that the plan administrator and plan sponsor must follow.

### Disclosure of Confidential Information by Plan Administrator and Plan Sponsor

Sections 4041(c)(2)(D)(ii)(I) and 4042(c)(3)(C)(i) of ERISA prohibit the disclosure by the plan administrator, in connection with a distress termination, and the plan administrator or plan sponsor, in connection with a PBGC-initiated termination, of information "that may directly or indirectly be associated with, or otherwise identify, an individual participant or beneficiary." The proposed regulation incorporates this restriction.

In addition, both sections 4041(c)(2)(D)(ii)(I) and 4042(c)(3)(C)(i) of ERISA provide a means for a plan sponsor or plan administrator to seek to restrict the disclosure of confidential information that would be exempt from disclosure under Freedom of Information Act ("FOIA"). Under section 552(b)(4) of FOIA, an agency has discretion to withhold documents on matters that are "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Sections 4041(c)(2)(D)(ii)(II) and 4042(c)(3)(C)(ii) provide that a court may limit disclosure of confidential information described in section 552(b) of FOIA, 5 U.S.C. 552(b), to "authorized representatives \* \* \* of the participants or beneficiaries that agree to ensure the confidentiality of such information." Section 4041(c)(2)(D)(iv) defines "authorized representative" for purposes of both sections 4041 and 4042 as "any employee organization representing participants in the pension plan." Accordingly, the proposed regulation provides that a plan administrator that has received a request for information in connection with a distress termination, and a plan administrator or plan sponsor that has received a request for information in connection with a PBGC-initiated termination, may seek a court order under which confidential information described in 5 U.S.C. 552(b) will be disclosed only to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv) of ERISA) that agree to ensure the confidentiality of such information, and will not be disclosed to other affected parties.

Typically, the authorized representative will be a labor union in a plan maintained in conjunction with a collective bargaining agreement. However, there may be no authorized representative where the participants are not covered under a collective bargaining agreement. The new PPA 2006 provisions do not address limiting

disclosure of confidential information in such cases.

### Disclosure of Confidential Information by PBGC

By its terms, section 4042(c)(3)(C)(i) of ERISA, which prohibits disclosure of information that identifies an individual participant or beneficiary, applies to a plan administrator or plan sponsor, but not to PBGC. This may be because PBGC is already prohibited from disclosing such information. Under the Privacy Act, 5 U.S.C. 552a, PBGC is prohibited from disclosing personally identifiable information with regard to a participant or beneficiary, without the individual's written consent. There are narrow exceptions stated in 5 U.S.C. 552a(b), but none apply to disclosure of identifying information that may be part of the administrative record in a PBGC-initiated termination. Accordingly, the proposed regulation states that PBGC shall not disclose any portions of the administrative record that are prohibited from disclosure under 5 U.S.C. 552a.

With respect to disclosure of confidential information, PBGC believes that, under the provisions added by section 506 of PPA 2006, it must disclose any part of the administrative record that contains confidential information, except as limited by a court. Unlike FOIA, which specifies categories of information that are exempt from disclosure, there are no exemptions under section 4042(c)(3) of ERISA. Rather, disclosure may only be limited by a court to the extent provided in section 4042(c)(3)(C)(ii).

In addition, PBGC believes that the Trade Secrets Act, 18 U.S.C. 1805, does not apply to disclosure of the administrative record under section 4042(c)(3) of ERISA. The Trade Secrets Act prohibits disclosure of trade secrets and related information "to any extent not authorized by law." PBGC believes that the disclosure requirements with respect to PBGC, as set forth in section 4042(c)(3), compel PBGC to disclose the administrative record upon request, subject only to limitation by a court as provided in section 4042(c)(3)(C)(ii). As a result, such disclosure is "authorized by law."

Additionally, PBGC does not believe that information it receives under sections 4010 or 4043 of ERISA that becomes part of an administrative record is exempt from disclosure under section 4042(c)(3). Information and documents submitted to PBGC under those sections are "exempt from disclosure under [FOIA], and \* \* \* may not be made public, except as may be relevant to any administrative or

judicial action or proceeding." 29 U.S.C. 1310(c), 1343(f). The exemption from disclosure under FOIA does not apply to disclosure of the administrative record because requests for the administrative record are made under section 4042(c)(3), not under FOIA. In addition, since material in the administrative record relates to an administrative action or proceeding, the restriction on making such material public does not apply.

To address the potential disclosure of confidential information that is part of an administrative record, the proposed regulation provides that PBGC will promptly notify the plan administrator and plan sponsor upon receipt of a request for the administrative record from an affected party. PBGC expects that this notification will be made not later than the second business day after receipt of the request. Under the proposed regulation, the plan administrator or plan sponsor may then seek a court order under which disclosure of those portions of the administrative record that contain confidential information described in 5 U.S.C. 552(b) will be made only to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv) of ERISA) that agree to ensure the confidentiality of such information, and will not be disclosed to other affected parties. The proposed regulation further provides that if PBGC receives such a court order prior to the 15th business day after PBGC receives a request for the administrative record, PBGC will disclose confidential information that is part of the administrative record as provided in the order.

### Applicability

The amendments in this proposed regulation would be applicable to terminations initiated on or after August 17, 2006, but only to requests for information made on or after the effective date of the final rule.

### Compliance With Rulemaking Guidelines

#### *E.O. 12866*

The PBGC has determined, in consultation with the Office of Management and Budget, that this rule is a "significant regulatory action" under Executive Order 12866. The Office of Management and Budget has therefore reviewed this notice under E.O. 12866. Pursuant to section 1(b)(1) of E.O. 12866 (as amended by E.O. 13422), PBGC identifies the following specific problems that warrant this agency action:

- The statute does not specify the form and manner in which information requested must be provided to the affected party, but instead states that PBGC may prescribe such requirements. Without rules for how the information is to be provided, plan administrators and plan sponsors will not know whether the method they choose for providing requested information is appropriate.

- There is uncertainty in the statute with respect to the information that a plan administrator that has filed a notice of intent to terminate a plan in a distress termination must provide, upon request, to an affected party. Without rules for what information is to be provided, plan administrators will not know what information they must provide, and affected parties will not know what information they are entitled to receive.

- There is uncertainty in the statute with respect to determining the date as of which an affected party may request information provided to PBGC in connection with a PBGC-initiated termination. Without clarification, affected parties will not know when they can begin to request information, and plan administrators, plan sponsors, and PBGC will not know when their obligation to provide information arises.

- Unlike FOIA, which specifies categories of information that are exempt from disclosure, section 4042(c)(3)(c)(ii) of ERISA provides only that a court may limit disclosure by PBGC of confidential information described in section 552(b) to an authorized representative. The statute does not specify when and by whom court limitation may be sought in cases where PBGC receives a request for the administrative record. Without clarification, plan administrators and plan sponsors will not know how disclosure of confidential information they submitted to PBGC can be limited.

#### *Regulatory Flexibility Act*

PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that the amendments in this proposed regulation would not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), sections 603 and 604 do not apply.

The proposed rule would implement statutory changes made by Congress. It would prescribe the form and manner for providing requested information and clarify the type of information that must be provided and the timeframes for providing such information. It would

also provide for notification by PBGC to the plan sponsor and plan administrator of a request for an administrative record so that the plan sponsor or plan administrator can, if it chooses, seek a court order limiting disclosure of confidential information as provided in the statute. These provisions impose no significant burden beyond the burden imposed by statute.

#### *Paperwork Reduction Act*

PBGC is submitting the information collection requirements under this proposed regulation to the Office of Management and Budget for review and approval under the Paperwork Reduction Act. Copies of PBGC's request may be obtained free of charge by contacting the Disclosure Division of the Office of the General Counsel of PBGC, 1200 K Street, NW., Washington, DC 20005, 202-326-4040.

This proposed regulation would modify information collection requirements under OMB control number 1212-0036 (expires September 30, 2007). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC needs this information in order to provide sufficient information to affected parties about the termination or possible termination of their pension plans.

Section 506 of PPA 2006 has been in effect for less than a year, and PBGC is not aware of any requests for information that have been made to date under its provisions. PBGC estimates that 100 plans with a total of 100,000 participants will terminate annually, and that 10,000 participants (and other affected parties) will annually make requests for information. PBGC estimates that the total annual burden for the collection of information will be about 30,000 hours and \$250,000.

Comments on the paperwork provisions under this proposed regulation should be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. Although comments may be submitted through February 4, 2008, the Office of Management and Budget requests that comments be received on or before January 4, 2008 to ensure their consideration. Comments may address (among other things)—

- Whether the proposed collection of information is needed for the proper performance of PBGC's functions and will have practical utility;

- The accuracy of PBGC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancement of the quality, utility, and clarity of the information to be collected; and

- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### **List of Subjects**

##### *29 CFR Part 4041*

Disclosure, Pensions, Termination of pension plans.

##### *29 CFR Part 4042*

Disclosure, Pensions, Termination of pension plans.

For the reasons given above, PBGC proposes to amend 29 CFR chapter XL as follows:

#### **PART 4041—TERMINATION OF SINGLE-EMPLOYER PLANS**

1. The authority citation for part 4041 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3), 1341, 1344, 1350.

2. New § 4041.51 is added to 29 CFR part 4041 to read as follows:

##### **§ 4041.51 Disclosure of information by plan administrator in distress termination.**

(a) *Request for Information.*

(1) *In general.* If a notice of intent to terminate under § 4041.43 is issued with respect to a plan, an affected party may make a request to the plan administrator for information submitted to PBGC under sections 4041(a)(2) and 4041(c)(2) of ERISA and §§ 4041.43 and 4041.45.

(2) *Requirements.* A request under paragraph (a) of this section must:

(i) Be in writing to the plan administrator;

(ii) State the name of the plan and that the request is for information submitted to PBGC with respect to the application for a distress termination of the plan;

(iii) State the name of the person making the request for information and such person's relationship to the plan (e.g., plan participant), and that such relationship meets the definition of affected party under § 4001.2 of this chapter; and

(iv) Be signed by the person making the request.

(b) *Response by Plan Administrator.*

(1) *Information.* The information that a plan administrator must provide in

response to a request under paragraph (a) of this section includes the PBGC Form 600, and any information submitted to PBGC pursuant to section 4041(c)(2) of ERISA and § 4041.45.

(2) *Timing of response.* A plan administrator that receives a request under paragraph (a) of this section must provide the information requested not later than the 15th business day (as defined in § 4000.22 of this chapter) after receipt of the request.

(3) *Deferral of due date.* If, at the time the plan administrator receives a request under paragraph (a) of this section, the plan administrator has not filed a PBGC Form 600, the plan administrator must provide the information requested under paragraph (a) not later than the 15th business day (as defined in § 4000.22 of this chapter) after a PBGC Form 600 is filed with PBGC.

(4) *Supplemental responses.* If, at any time after the later of the receipt of a request under paragraph (a) of this section, or the filing of PBGC Form 600, the plan administrator submits additional information to PBGC with respect to the plan termination under section 4041(c)(2) of ERISA and § 4041.45, the plan administrator must, not later than the 15th business day (as defined in § 4000.22 of this chapter) after each additional submission, provide the additional information to any affected party that has made a request under paragraph (a) of this section.

(5) *Confidential information.*

(i) In responding to a request under paragraph (a) of this section, the plan administrator shall not provide information that may, directly or indirectly, identify an individual participant or beneficiary of the plan.

(ii) A plan administrator that has received a request under paragraph (a) of this section may seek a court order under which confidential information described in section 552(b) of title 5, United States Code—

(A) Will be disclosed only to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv) of ERISA) that agree to ensure the confidentiality of such information, and,

(B) Will not be disclosed to other affected parties.

3. New part 4042 is added to chapter XL to read as follows:

**PART 4042—SINGLE-EMPLOYER PLAN TERMINATION INITIATED BY PBGC**

**Subpart A—General Provisions**

Sec.

4042.1 Purpose and scope.

4042.2 Definitions.

4042.3 Issuance rules.

**Subpart B—Reserved**

**Subpart C—Disclosure**

4042.4 Disclosure of information by plan administrator or plan sponsor.

4042.5 Disclosure of administrative record by PBGC.

Authority: 29 U.S.C. 1302(b)(3), 1342.

**Subpart A—General Provisions**

**§ 4042.1 Purpose and scope.**

This part sets forth rules and procedures relating to single-employer plan terminations initiated by PBGC under section 4042 of ERISA.

**§ 4042.2 Definitions.**

The following terms are defined in § 4001.2 of this chapter: affected party, ERISA, PBGC, and plan administrator.

**§ 4042.3 Issuance rules.**

PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part. PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

**Subpart B—Reserved**

**Subpart C—Disclosure**

**§ 4042.4 Disclosure of information by plan administrator or plan sponsor.**

(a) *Request for Information.*

(1) *In general.* Beginning on the third business day (as defined in § 4000.22 of this chapter) after PBGC has issued a notice under section 4042 of ERISA that a plan should be terminated, an affected party may make a request to the plan sponsor or the plan administrator (or both) for any information that such plan administrator or plan sponsor has submitted to PBGC in connection with the plan termination.

(2) *Requirements.* A request under paragraph (a) of this section must:

(i) Be in writing to the plan administrator or plan sponsor;

(ii) State the name of the plan and that the request is for information submitted to PBGC in connection with the plan termination;

(iii) State the name of the person making the request for information and such person's relationship to the plan (e.g., plan participant), and that such relationship meets the definition of affected party under § 4001.2 of this chapter; and

(iv) Be signed by the person making the request.

(b) *Response by Plan Administrator or Plan Sponsor.*

(1) *Timing of response.* A plan administrator or plan sponsor that

receives a request under paragraph (a) of this section must provide the information requested not later than the 15th business day (as defined in § 4000.22 of this chapter) after receipt of the request.

(2) *Supplemental responses.* If, at any time after receipt of a request under paragraph (a), the plan administrator or plan sponsor submits additional information to PBGC in connection with the plan termination, the plan administrator or plan sponsor must provide such additional information to any affected party that has made a request under paragraph (a), not later than the 15th business day (as defined in § 4000.22 of this chapter) after the information is submitted to PBGC.

(3) *Confidential information.*

(i) In responding to a request under paragraph (a) of this section, the plan administrator or plan sponsor shall not provide information that may, directly or indirectly, identify an individual participant or beneficiary.

(ii) A plan administrator or plan sponsor that has received a request under paragraph (a) of this section may seek a court order under which confidential information described in section 552(b) of title 5, United States Code—

(A) Will be disclosed only to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv) of ERISA) that agree, to ensure the confidentiality of such information, and

(B) Will not be disclosed to other affected parties.

**§ 4042.5 Disclosure of administrative record by PBGC.**

(a) *Request for Administrative Record.*

(1) *In general.* Beginning on the third business day (as defined in § 4000.22 of this chapter) after PBGC has issued a notice under section 4042 of ERISA that a plan should be terminated, an affected party with respect to the plan may make a request to PBGC for the administrative record of PBGC's determination that the plan should be terminated.

(2) *Requirements.* A request under paragraph (a) of this section must:

(i) Be in writing;

(ii) State the name of the plan and that the request is for the administrative record with respect to a notice issued by PBGC under section 4042 of ERISA that a plan should be terminated;

(iii) State the name of the person making the request, the person's relationship to the plan (e.g., plan participant), and that such relationship meets the definition of affected party under § 4001.2 of this chapter; and

(iv) Be signed by the person making the request.

(3) A request under paragraph (a) of this section must be sent to PBGC's Disclosure Officer at the address provided on PBGC's Web site. To expedite processing, the request should be prominently identified as an "Administrative Record Request."

(b) *PBGC Response to Request for Administrative Record.*

(1) *Notification of plan administrator and plan sponsor.* Upon receipt of a request under paragraph (a) of this section, PBGC will promptly notify the plan administrator and plan sponsor that it has received a request for the administrative record, and the date by which PBGC will provide the information to the affected party that made the request.

(2) *Confidential information.*

(i) In responding to a request under paragraph (a) of this section, PBGC will not disclose any portions of the administrative record that are prohibited from disclosure under the Privacy Act, 5 U.S.C. 552a.

(ii) A plan administrator or plan sponsor that has received notification pursuant to paragraph (b)(1) of this section may seek a court order under which those portions of the administrative record that contain confidential information described in section 552(b) of title 5, United States Code—

(A) Will be disclosed only to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv) of ERISA) that agree to ensure the confidentiality of such information, and

(B) Will not be disclosed to other affected parties.

(iii) If, before the 15th business day (as defined in § 4000.22 of this chapter) after PBGC has received a request under paragraph (a), PBGC receives a court order as described in paragraph (b)(2)(ii) of this section, PBGC will disclose those portions of the administrative record that contain confidential information described in section 552(b) of title 5, United States Code, only as provided in the order.

(3) *Timing of response.* PBGC will send the administrative record to the affected party that made the request not later than the 15th business day (as defined in § 4000.22 of this chapter) after it receives the request.

(4) *Form and manner.* PBGC will provide the administrative record using measures (including electronic measures) reasonably calculated to ensure actual receipt of the material by the intended recipient.

Issued in Washington, DC, this 30th day of November, 2007.

**Charles E.F. Millard,**

*Interim Director, Pension Benefit Guaranty Corporation.*

[FR Doc. E7-23577 Filed 12-4-07; 8:45 am]

**BILLING CODE 7709-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2007-0105]

RIN 1625-AA09

#### **Drawbridge Operation Regulations; Biscayne Bay, Atlantic Intracoastal Waterway, Miami River, and Miami Beach Channel, Miami-Dade County, FL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the regulations governing the operation of the east and west spans of the Venetian Causeway bridges across the Miami Beach Channel on the Atlantic Intracoastal Waterway, the Miami Avenue bridge and the Brickell Avenue bridge across the Miami River, Miami-Dade County. This proposed rule would allow these bridges to remain in the closed position for periods of time during the last Sunday in January during the running of an annual marathon.

**DATES:** Comments and related material must reach the Coast Guard on or before January 4, 2008.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG-2007-0105 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online:* <http://www.regulations.gov>.

(2) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(3) *Hand delivery:* Room W12-140 on the Ground Floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

*Fax:* 202-493-2251.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Mr. Gwin Tate, Seventh Coast Guard District, Bridge Administration Branch, (305) 415-6747. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### **SUPPLEMENTARY INFORMATION:**

#### **Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

#### **Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG-2007-0105), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

#### **Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time, click on "Search for Dockets," and enter the docket number for this rulemaking (USCG-2007-0105) in the Docket ID box, and click enter. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of